

*Appln. No. 10/820,326
Amdt. dated 03/31/05
Reply to Office Action of 02/28/05*

REMARKS

Claims 1-14 are pending and remain for consideration.

Claims 7-14 are rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 3 and 4 of U.S. Pat. No. 6,348,647 to Ahrens (Ahrens '647) in view of U.S. Pat. Des. 389,855 to Druz (Druz). The rejection is traversed and reconsideration is respectfully requested.

Although Druz is mentioned in the opening paragraph of the claim rejection, the arguments section refers instead to WO 03/091986 A1 to Ahrens (Ahrens '986). Therefore Applicant will address the claim rejection with reference to Ahrens '647 and Ahrens '986.

Ahrens '647 is directed to a fipple flute having an instrument body including an outer surface defining an interior resonating cavity. An airway extends from the outer surface into the resonating cavity and includes a nozzle section as well as a throat section. The instrument body defines an upper surface having a plurality of toneholes extending therethrough into the resonating cavity such that when the toneholes are covered or uncovered by a user while blowing into the airway, different notes are played by the fipple flute. At least one fipple window extends through the upper surface of the instrument body adjacent to and aligned with the throat section of the airway to allow a portion of the air blown into the flute to enter the resonating cavity and a portion of the air to exit the fipple window.

Ahrens '986 is directed to flutes with multiple chambers that share compound bisected toneholes. One exemplary embodiment of a flute (10) comprises first and second chambers in which sound is resonated and a tonehole disposed at and shared

Appln. No. 10/820,326
Amdt. dated 03/31/05
Reply to Office Action of 02/28/05

by the first and second chambers. The tonehole is coverable by a single finger of an operator's hand and is configured to facilitate airflow communication from the first chamber through the tonehole and airflow communication from the second chamber through the tonehole. An exemplary embodiment of an ocarina comprises an instrument body (12) having a first chamber having a first airway (18) through which air is received and a second chamber having a second airway (20) through which air is received, a top cover (14) disposed on the instrument body, an upper tonehole (26) disposed through the top cover to facilitate airflow through the first chamber and airflow through the second chamber, and a bottom cover (16) disposed on the instrument body. Another embodiment of a flute comprises first and second chambers in which sound is resonated, a blowing aperture through which air is provided into the first and second chambers, and a tonehole disposed at and shared by the first and second chambers.

The Examiner admits that claims 3 and 4 of Ahrens '647 do not teach or suggest a recess positioned adjacent to a cover as is recited in claims 7-14 of the present application. However, the Examiner asserts that the abstract of Ahrens '986 discloses the use of an ocarina with a recess positioned adjacent to a cover. Applicant respectfully disagrees with the Examiner's conclusion.

The Abstract referred to by the Examiner is directed to a two-chambered ocarina shown in FIG. 1. The Abstract and the drawing describe and show airways or holes (18) and (20) through the side wall and toneholes (22), (24) and (26) through the top cover. However, there is no teaching or suggestion of a recess formed in an inner surface of the wall of an ocarina as is recited in claims 7-14 of the present application. Indeed, FIG. 1 of Ahrens '986 does not even show an inner surface, much less show a recess in an inner surface, wherein at least one of the apertures is

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in register with the recess, as is recited in independent claim 7 of the present application and is incorporated by reference in dependent claims 8-14.

In view of the foregoing, the teaching of Ahrens '647 when taken either alone or in combination with that of Ahrens '986 does not render claims 7-14 obvious under the judicially created doctrine of obviousness-type double patenting. Accordingly, it is respectfully submitted that the obviousness-type double patenting rejection is improper and therefore should be withdrawn.

Claims 1-13 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Druz in view of Ahrens '986. The rejection is traversed and reconsideration is respectfully requested.

Druz is directed to an ornamental design for a heart-shaped musical instrument as shown in the figures. The Examiner states that "Druz discloses the use of an ocarina comprising a sound chamber having a plurality of apertures .. and a recess disposed at an inner surface of the sound chamber, at least one of the apertures being in register with said recess (see figure 4)." Applicant respectfully disagrees with the Examiner's conclusion.

All of the views shown in the design patent of Druz show the exterior surfaces of the sound chamber of the heart-shaped musical instrument. There are no interior views of the sound chamber encompassed by the walls in order to determine whether a recess is disposed at an inner surface of a wall or sound chamber as is recited in independent claims 1 and 7 of the present application.

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The Examiner further states that Ahrens '986 shows the use of an ocarina with "recesses that have toneholes (26) that are in register with the recesses." Applicant respectfully disagrees with the Examiner's conclusion.

The flute referred to by the Examiner in Ahrens '986 shows a plurality of airways and toneholes through the side and top walls of the flute. However, Ahrens '986 does not describe or show the interior of a wall or sound chamber. Therefore, it cannot be maintained that Ahrens '986 teaches or suggests a recess in an inner surface of a wall or a sound chamber as is recited in independent claims 1 and 7 of the present application. Much less can it be maintained that at least one of the apertures is in register with a recess as is recited in independent claims 1 and 7, or that such a recess is positioned adjacent to a cover as is recited in claim 7.

In view of the foregoing, it is respectfully submitted that the teaching of Druz when taken either alone or in combination with that of Ahrens '986 does not render claims 1 and 7 obvious. Moreover, because claims 2-6 and 8-13 each ultimately depend from and thereby incorporate the limitations of one of the independent claims, these dependent claims are not obvious for at least the reasons set forth for claims 1 and 7.

Claim 14 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Druz in view of Ahrens '647 and U.S. Pat. No. 4,893,541 to Fowler et al. (Fowler). Claim 14 depends from and thereby incorporates the limitations of claim 7. The rejection is traversed and reconsideration is respectfully requested.

Fowler is directed to an ocarina including a generally oval body enclosing a hollow chamber, a mouthpiece, a passageway connecting the mouthpiece and the

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Amdt. dated 03/31/05
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chamber, a vent slot against which the air within the chamber may vibrate, and a plurality of pitch control holes. The Examiner cites Fowler for mentioning that ocarinas can be made of clay.

However, it has been demonstrated above that Druz and Ahrens '647 do not teach or suggest an ocarina having an inner surface of a wall including a recess positioned adjacent to a cover as is recited in claim 7 from which rejected claim 14 depends. It therefore follows that the teachings of Druz and Ahrens '647 when taken either alone or in combination with the teachings of Fowler do not render claim 14 obvious.

In view of the foregoing, it is respectfully submitted that claims 1-14 are in condition for allowance. All issues raised by the Examiner having been addressed, an early action to that effect is earnestly solicited.

No fees or deficiencies in fees are believed to be owed. However, authorization is hereby given to charge our Deposit Account No. 13-0235 in the event any such fees are owed.

Respectfully submitted,

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